

IP AF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Atty Dkt. RYM-36-1148

In re Patent Application of

O'BRIEN et al

Serial No. 09/043,406

Filed: March 18, 1998

Title: SERVICE PROVISION SYSTEM FOR USE IN DISTRIBUTED PROCESSING ENVIRONMENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450



C# M#

Confirmation No. 6681

TC/A.U.: 3628

Examiner: Robinson Boyce, A.

Date: September 25, 2008

Sir:

Correspondence Address Indication Form Attached.

NOTICE OF APPEAL

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the Examiner twice/finally rejecting \$510.00 (1401)/\$255.00 (2401) \$ applicant's claim(s).

An appeal BRIEF is attached in the pending appeal of the above-identified application \$510.00 (1402)/\$255.00 (2402) \$

Credit for fees paid in prior appeal without decision on merits -\$ ()

A reply brief is attached. (no fee)

Pre-Appeal Brief Request for Review form attached.

Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s)
One Month Extension \$120.00 (1251)/\$60.00 (2251)
Two Month Extensions \$460.00 (1252)/\$230.00 (2252)
Three Month Extensions \$1050.00 (1253)/\$525.00 (2253)
Four Month Extensions \$1640.00 (1254)/\$820.00 (2254) \$

"Small entity" statement attached.

Less month extension previously paid on -\$ ()

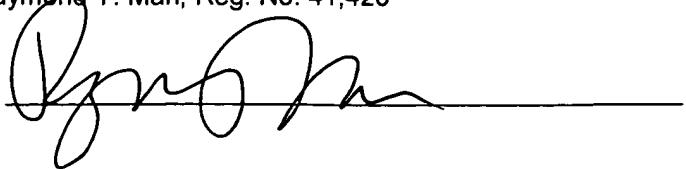
TOTAL FEE ENCLOSED \$ 0.00

CREDIT CARD PAYMENT FORM ATTACHED.

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

901 North Glebe Road, 11th Floor
Arlington, Virginia 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100
RYM:dmw

NIXON & VANDERHYE P.C.
By Atty: Raymond Y. Mah, Reg. No. 41,426

Signature: 



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of

O'BRIEN et al

Atty. Ref.: 36-1148

Serial No. 09/043,406

TC/A.U.: 3628

Filed: March 18, 1998

Examiner: Robinson Boyce, A.

For: SERVICE PROVISION SYSTEM FOR USE IN DISTRIBUTED
PROCESSING ENVIRONMENTS

* * * * *

September 25, 2008

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

Appellant hereby submits this Reply Brief under the provisions of 37 C.F.R.

1.193(b) in response to the Examiner's Answer mailed July 25, 2008. The arguments set forth in the Appeal Brief dated April 9, 2008 are incorporated herein. The following arguments are presented in response to new arguments presented in the Examiner's Answer and to further clarify Appellant's previous positions.

Independent claims 53 and 61:

For the reasons discussed in the Appeal Brief, Carr fails to disclose “processing means for processing the composite service request; negotiation means for use in establishing conditions applicable to provision, by one or more other agents in said multi-agent system, of one or more component processes involved in provision of the composite service, said negotiation means being adapted to assemble said conditions proactively by **negotiation prior to receipt of said composite service request**...wherein the processing means is adapted to process a composite service request by accessing one or more of the previously established conditions, for supply of component processes by said one or more other agents, in the data store, processing the request using the one or more established conditions and producing said response (emphasis added),” as required by independent claim 53. Carr also fails to disclose “establishing conditions applicable to provision, by one or more other agents in said multi-agent system, of one or more component processes in a composite service, proactively by **negotiation prior to receipt of a request for said composite service**...processing said composite service request by:
a) accessing said previously established conditions, for component process supply in the data store (emphasis added),” as required by independent claim 61.

The Examiner’s Answer (page 10) apparently alleges that col. 9, lines 45-64 of Carr discloses “negotiation prior to receipt of said composite service request” as required by claim 53 and “negotiation prior to receipt of a request for said composite service” as

similarly required by claim 61. Appellant disagrees. Col. 9, lines 45-64 of Carr discloses the following:¹

In the above example, the control processor 48 contains a database that includes the bandwidth capacity of each of the RF data channels associated with modulators 46A-46N in order to be able to provide efficient routing and control of information sent from the enhanced service providers to users via the cable television network. It will be appreciated by those skilled in the art that the intelligence required for making the decision of whether to use the PSTN data path or the cable TV channel(s) could also be made by each service provider. Such an alternative system would require that each service provider be provided with an ongoing update of channel availability for each of the high-speed RF channels available through modulators 46A-46N. Or, the ESP could be provided with a single threshold value of the quantity of data to be transmitted, which is used to determine if the data channels are to be sent over the PSTN or CATV network. Upon making a determination that a substantial quantity of data is to be transmitted to a given user, the service provider could then initiate a request for bandwidth allocation on the cable TV system which would be transmitted by router 42 to control processor 48 which could then....

The above portion of Carr does not disclose any negotiation. The above portion of Carr merely discloses maintaining a database that includes and updates the bandwidth capacity of data channels. Maintaining an updated database of which channels in a set of channels are currently free is not, in any sense, a negotiation. It is just a record of the channels which are currently available. The database is merely informed of what the bandwidth capacities are and then stores this information. The absence of any element of the claim from the cited reference negates anticipation. See, e.g., *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715 (Fed. Cir. 1984). Anticipation is not

¹ Of col. 9, lines 45-64 of Carr, it is noted that the col. 9, lines 45-49 and col. 9, lines 50-64 describe alternative embodiments. See, e.g., "Such an alternative system..." in col. 9, line 53.

shown even if the differences between the claims and the prior art reference are insubstantial and the missing elements could be supplied by the knowledge of one skilled in the art. See, e.g., *Structural Rubber Prods.*, 749 F.2d at 716-17.

Even if providing ongoing updates to Carr's database of channel availability (in col. 9, lines 45-64) was somehow misconstrued to be a negotiation, then there is no disclosure in Carr of when this alleged negotiation would occur relative to when a composite service request is received. If anything, the only disclosed negotiation that occurs in Carr occurs after a request is received as described in the portion of Carr that immediately continues from col. 9, lines 45-64. Namely, the paragraph starting at col. 9, line 45 of Carr states in full:

In the above example, the control processor 48 contains a database that includes the bandwidth capacity of each of the RF data channels associated with modulators 46A-46N in order to be able to provide efficient routing and control of information sent from the enhanced service providers to users via the cable television network. It will be appreciated by those skilled in the art that the intelligence required for making the decision of whether to use the PSTN data path or the cable TV channel(s) could also be made by each service provider. Such an alternative system would require that each service provider be provided with an ongoing update of channel availability for each of the high-speed RF channels available through modulators 46A-46N. Or, the ESP could be provided with a single threshold value of the quantity of data to be transmitted, which is used to determine if the data channels are to be sent over the PSTN or CATV network. Upon making a determination that a substantial quantity of data is to be transmitted to a given user, the service provider could then initiate a request for bandwidth allocation on the cable TV system which would be transmitted by router 42 to control processor 48 which could then assign (sic – assign) a specified bandwidth for a given period of time in order to accommodate the data to be transmitted from the service provider to the user. This type of system requires the cooperative interaction between enhanced service provider and the split channel bridging unit in order to allocate bandwidth and provide for efficient data transmission through the cable television network where appropriate. Such an alternative

system has the disadvantage that additional overhead and packet transmissions are required in order to provide the negotiations between the split channel bridging unit 18 and each enhanced service provider in order assign and allocate bandwidth. Utilizing the split channel bridging unit 18 to control usage of the cable TV channels has the advantage that the entire system including all of the service providers are managed in a controlled manner thereby, minimizing the possibility of substantial overload conditions in which excessive data bandwidth is simultaneously requested by a plurality of service providers.

The above passage (including col. 9, lines 45-64) of Carr clearly and unambiguously states that the negotiations between the split channel bridging unit 18 (in particular, the control processor 48 of the split channel bridging unit 18) and an enhanced service provider 10A-10N occurs after a request for bandwidth allocation initiated by the enhanced service provider 10A-10N is transmitted to and received by the split channel bridging unit 18 (and certainly after a request for information has been made by and received from a user). For any request for bandwidth initiated by the enhanced service provider 10A-10N, the negotiations in order to assign and allocate bandwidth for that request occurs after receipt of that request.

The Examiner's Answer (page 11) also alleges that Carr discloses a composite request because "the request can be allowed on 6 different bandwidths since users are permitted to receive high-speed signals over the cable television network via one of selectable number of RF channels, and in order to make an allocation *one of out of the plurality of 6 megahertz bandwidths* must be negotiated for each request, which therefore represents being composite (emphasis original)." Appellant disagrees with this allegation. A selection of one of the channels is not a *composite* service request just because there is a plurality of channels to choose from. That is, if an entity selects a

channel and requests that the entity's selected channel be allocated to the entity, that does not make the entity's request a composite *request* -- the entity has still just requested one thing. In other words, a request for one thing cannot be considered a composite request just because the one thing is one of a plurality of available things.

Dependent claims 54 and 62:

Claim 54 requires "one or more of said established conditions has an associated expiry time after which it is no longer applicable." Claim 62 requires "wherein one or more of said established conditions for the component process supply stored in said data store is applicable until advent of an expiry time associated with said one or more conditions." Like the non-Final Rejection (pages 5 and 7), the Examiner's Answer alleges that col. 9, lines 53-62 of Carr discloses each of these limitations. Appellant disagrees. Col. 9, lines 53-62 of Carr states the following:

Such an alternative system would require that each service provider be provided with an ongoing *update of channel availability for each of the high-speed RF channels available through modulators 46A-46N*. Or, the ESP could be provided with a single threshold value of the quantity of data to be transmitted, which is used to determine if the data channels are to be sent over the PSTN or CATV network. Upon making a determination that a substantial quantity of data is to be transmitted to a given user, the service provider could then initiate a request for bandwidth allocation...(emphasis added)

Page 11 of the Examiner's Answer alleges that the above portion (col. 9, line 53-62) of Carr "discloses after expiration by disclosing outside of the given period of time for a specified bandwidth." This allegation is incorrect. A time period which occurs "outside of the given period of time for a specified bandwidth" may occur solely before the given period of time, and thus a mere disclosure of a period of time outside of the given period of time does not necessarily disclose expiration of the given period of time.

Moreover, just because a specified available bandwidth (“update of channel availability” as disclosed by the above portion of Carr) has been replaced with another specified available bandwidth does not mean that the now-replaced bandwidth had an associated expiry time by which the now-replaced bandwidth is no longer applicable. It simply means that the specified available bandwidth is not applicable at that time due to replacement by the now updated bandwidth. There is nothing in Carr that discloses when specifically the bandwidth would be replaced or that the specified bandwidth included a time of expiry. Even if an entire condition (allegedly the specified bandwidth) is replaced, this does not mean that the entire condition included a time for expiry.

Dependent claims 55 and 63:

Claim 55 requires “the processing means is adapted to detect an expired or undefined condition in the data store, which condition is applicable to a component process used in the provision of the requested composite service, and to trigger the negotiation means to establish a substitute condition.” Claim 63 requires “finding whether any conditions for provision of component processes in said service are expired or undefined and substituting a substitute condition in the event that any such condition is found.” Even if a period of time exists outside of a given period of time for a specified bandwidth (see “discloses after expiration by disclosing outside of the given period of time for a specified bandwidth” on page 11 of the Examiner’s Answer), this does not disclose detecting an expired or undefined condition, let alone substituting a substitute condition upon detection of the expired condition or the undefined condition. Col. 9, line 53-62 of Carr merely discloses replacement of a specified bandwidth with an updated

specified bandwidth. Just because something may exist does not mean that it is being detected, let alone a substitution performed based on any such detection.

Dependent claims 65:

Dependent claim 65 requires “wherein said method further comprises the step, *responsive to a failure to schedule one or more component processes*, of carrying out one of the following steps: i) re-schedule the component process; ii) transmit a message to an entity which requested the composite service indicating that the composite service can only be provided under conditions different to previously established conditions for supply of said composite service; iii) re-assign the composite service to another service provider; or iv) indicate to an entity which requested the composite service that the requested composite service cannot be provided (emphasis added).”

As acknowledged by page 11 (last line) of the Examiner's Answer, the first and second requests discussed in col. 8, line 29 – Col. 9, line 4 are different requests. Indeed, the first and second requests are completely different in type and independent from each other. For example, the first request is for information concerning the price and volume history of a stock for the past week (see col. 8, lines 28-31) and the second request is for information concerning travel and high definition picture information illustrating hotel facilities (see col. 8, lines 56-60).

Despite the first and second requests being completely different types of requests and being independent from each other, the Examiner's Answer alleges that Carr renders obvious the first and second requests making repeat scheduling since “both requests are made on the same system”, and that this means that “a form of scheduling is being repeated for different processes” and that this therefore suggests that “scheduling for the

first request will fail in relation to scheduling for the second request” and that this therefore means that “scheduling for the second request must take place separately.” (See paragraph bridging pages 11-12 of the Examiner’s Answer). This attenuated chain of “reasoning” completely ignores the explicit teachings of Carr describing how different the first and second requests are. As noted above, the first request involves price and volume history of a stock for the past week and the second request is for information concerning travel and high definition picture information illustrating hotel facilities. The system processes these requests differently and the requested information is transmitted through different channels (i.e., the first requested information is sent via the modem link over the PSTN and the second requested information being sent via the cable system as described in cols. 8-9). Even if submitted on the same system, the “scheduling” of these first and second requests will be completely different since the nature of these first and second requests are so different.

Moreover, the second request involving travel and high definition picture information illustrating hotel facilities is not dependent on the failure to accommodate the first request involving price and volume history of a stock. These requests are completely independent of each other, even if made to the same system. Carr therefore fails to teach or suggest “responsive to a *failure* to schedule one or more component processes (emphasis added)” as further required by claim 65. Since the first and second requests are separate, the scheduling for the first request (involving price and volume history of a stock for the past week) will not fail in relation to scheduling for the second request (concerning travel and high definition picture information illustrating hotel facilities) as apparently alleged by the Examiner’s Answer.

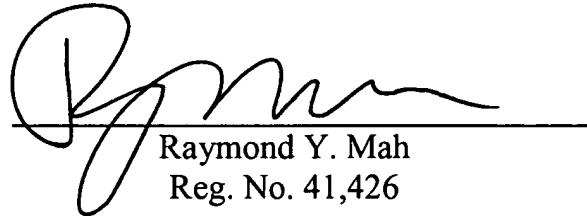
Conclusion

For at least the reasons set forth above and discussed in detail in the previously-filed Appeal Brief, it is respectfully requested that the rejections on appeal be reversed.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:



Raymond Y. Mah
Reg. No. 41,426

RYM:dmw
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100